

SENATE BILL No. 290

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-41-7.5-9; IC 35-48-4; IC 35-50-6.

Synopsis: Criminal law matters. Provides that a person may be convicted of possession with intent to manufacture or deliver a controlled substance without additional evidence of intent to manufacture or deliver if the person possesses more than a specified quantity of the controlled substance. Specifies that the fact that an individual has attended a syringe exchange program may not form any part of a probable cause or reasonable suspicion determination. Permits a person placed on home detention as a condition of pretrial release to earn one day of good time credit for every four days served on pretrial home detention.

Effective: July 1, 2016.

Young R Michael

January 7, 2016, read first time and referred to Committee on Corrections & Criminal Law.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 290

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-41-7.5-9, AS ADDED BY P.L.208-2015,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 9. (a) A law enforcement officer may not stop,
4 search, or seize an individual based on the fact the individual has
5 attended a program under this chapter.

6 (b) The fact an individual has attended a program under this chapter
7 may not be the basis, **in whole or in part**, for a **determination of**
8 probable cause **or reasonable suspicion** by a law enforcement officer.

9 SECTION 2. IC 35-48-4-1, AS AMENDED BY P.L.226-2014(ts),
10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2016]: Sec. 1. (a) A person who:

12 (1) knowingly or intentionally:

13 (A) manufactures;

14 (B) finances the manufacture of;

15 (C) delivers; or

16 (D) finances the delivery of;

17 cocaine or a narcotic drug, pure or adulterated, classified in



1 schedule I or II; or
 2 (2) possesses, with intent to:
 3 (A) manufacture;
 4 (B) finance the manufacture of;
 5 (C) deliver; or
 6 (D) finance the delivery of;
 7 cocaine or a narcotic drug, pure or adulterated, classified in
 8 schedule I or II;
 9 commits dealing in cocaine or a narcotic drug, a Level 5 felony, except
 10 as provided in subsections (b) through (e).
 11 (b) A person may be convicted of an offense under subsection (a)(2)
 12 only if:
 13 (1) there is evidence in addition to the weight of the drug that the
 14 person intended to manufacture, finance the manufacture of,
 15 deliver, or finance the delivery of the drug; **or**
 16 **(2) the amount of the drug involved is at least ten (10) grams.**
 17 (c) The offense is a Level 4 felony if:
 18 (1) the amount of the drug involved is at least one (1) gram but
 19 less than five (5) grams; or
 20 (2) the amount of the drug involved is less than one (1) gram and
 21 an enhancing circumstance applies.
 22 (d) The offense is a Level 3 felony if:
 23 (1) the amount of the drug involved is at least five (5) **grams** but
 24 less than ten (10) grams; or
 25 (2) the amount of the drug involved is at least one (1) gram but
 26 less than five (5) grams and an enhancing circumstance applies.
 27 (e) The offense is a Level 2 felony if:
 28 (1) the amount of the drug involved is at least ten (10) grams; or
 29 (2) the amount of the drug involved is at least five (5) **grams** but
 30 less than ten (10) grams and an enhancing circumstance applies.
 31 SECTION 3. IC 35-48-4-1.1, AS AMENDED BY P.L.226-2014(ts),
 32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2016]: Sec. 1.1. (a) A person who:
 34 (1) knowingly or intentionally:
 35 (A) manufactures;
 36 (B) finances the manufacture of;
 37 (C) delivers; or
 38 (D) finances the delivery of;
 39 methamphetamine, pure or adulterated; or
 40 (2) possesses, with intent to:
 41 (A) manufacture;
 42 (B) finance the manufacture of;



(C) deliver; or
 (D) finance the delivery of;
 methamphetamine, pure or adulterated;
 commits dealing in methamphetamine, a Level 5 felony, except as
 provided in subsections (b) through (e).

(b) A person may be convicted of an offense under subsection (a)(2)
 only if:

(1) there is evidence in addition to the weight of the drug that the
 person intended to manufacture, finance the manufacture of,
 deliver, or finance the delivery of the drug; **or**

(2) the amount of the drug involved is at least ten (10) grams.

(c) The offense is a Level 4 felony if:

(1) the amount of the drug involved is at least one (1) gram but
 less than five (5) grams; **or**

(2) the amount of the drug involved is less than one (1) gram and
 an enhancing circumstance applies.

(d) The offense is a Level 3 felony if:

(1) the amount of the drug involved is at least five (5) **grams** but
 less than ten (10) grams; **or**

(2) the amount of the drug involved is at least one (1) gram but
 less than five (5) grams and an enhancing circumstance applies.

(e) The offense is a Level 2 felony if:

(1) the amount of the drug involved is at least ten (10) grams;

(2) the amount of the drug involved is at least five (5) **grams** but
 less than ten (10) grams and an enhancing circumstance applies;

or

(3) the person is manufacturing the drug and the manufacture
 results in an explosion causing serious bodily injury to a person
 other than the manufacturer.

SECTION 4. IC 35-48-4-2, AS AMENDED BY P.L.226-2014(ts),
 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2016]: Sec. 2. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; **or**

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule
 I, II, or III, except marijuana, hash oil, hashish, salvia, or a
 synthetic drug; **or**

(2) possesses, with intent to:

(A) manufacture;



1 (B) finance the manufacture of;
 2 (C) deliver; or
 3 (D) finance the delivery of;
 4 a controlled substance, pure or adulterated, classified in schedule
 5 I, II, or III, except marijuana, hash oil, hashish, salvia, or a
 6 synthetic drug;

7 commits dealing in a schedule I, II, or III controlled substance, a Level
 8 6 felony, except as provided in subsections (b) through (f).

9 (b) A person may be convicted of an offense under subsection (a)(2)
 10 only if:

11 (1) there is evidence in addition to the weight of the drug that the
 12 person intended to manufacture, finance the manufacture of,
 13 deliver, or finance the delivery of the drug; **or**

14 (2) **the amount of the drug involved is at least ten (10) grams.**

15 (c) The offense is a Level 5 felony if:

16 (1) the amount of the drug involved is at least one (1) gram but
 17 less than five (5) grams; or

18 (2) the amount of the drug involved is less than one (1) gram and
 19 an enhancing circumstance applies.

20 (d) The offense is a Level 4 felony if:

21 (1) the amount of the drug involved is at least five (5) **grams** but
 22 less than ten (10) grams; or

23 (2) the amount of the drug involved is at least one (1) gram but
 24 less than five (5) grams and an enhancing circumstance applies.

25 (e) The offense is a Level 3 felony if:

26 (1) the amount of the drug involved is at least ten (10) **grams** but
 27 less than twenty-eight (28) grams; or

28 (2) the amount of the drug involved is at least five (5) **grams** but
 29 less than ten (10) grams and an enhancing circumstance applies.

30 (f) The offense is a Level 2 felony if:

31 (1) the amount of the drug involved is at least twenty-eight (28)
 32 grams; or

33 (2) the amount of the drug involved is at least ten (10) **grams** but
 34 less than twenty-eight (28) grams and an enhancing circumstance
 35 applies.

36 SECTION 5. IC 35-48-4-3, AS AMENDED BY P.L.226-2014(ts),
 37 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2016]: Sec. 3. (a) A person who:

39 (1) knowingly or intentionally:

40 (A) manufactures;

41 (B) finances the manufacture of;

42 (C) delivers; or



(D) finances the delivery of;
 a controlled substance, pure or adulterated, classified in schedule
 IV; or
 (2) possesses, with intent to manufacture or deliver, a controlled
 substance, pure or adulterated, classified in schedule IV;
 commits dealing in a schedule IV controlled substance, a Class A
 misdemeanor, except as provided in subsections (b) through (f).

(b) A person may be convicted of an offense under subsection (a)(2)
 only if:

(1) there is evidence in addition to the weight of the drug that the
 person intended to manufacture or deliver the controlled
 substance; **or**

(2) the amount of the drug involved is at least ten (10) grams.

(c) The offense is a Level 6 felony if:

(1) the amount of the drug involved is at least one (1) gram but
 less than five (5) grams; or

(2) the amount of the drug involved is less than one (1) gram and
 an enhancing circumstance applies.

(d) The offense is a Level 5 felony if:

(1) the amount of the drug involved is at least five (5) **grams** but
 less than ten (10) grams; or

(2) the amount of the drug involved is at least one (1) gram but
 less than five (5) grams and an enhancing circumstance applies.

(e) The offense is a Level 4 felony if:

(1) the amount of the drug involved is at least ten (10) **grams** but
 less than twenty-eight (28) grams; or

(2) the amount of the drug involved is at least five (5) **grams** but
 less than ten (10) grams and an enhancing circumstance applies.

(f) The offense is a Level 3 felony if:

(1) the amount of the drug involved is at least twenty-eight (28)
 grams; or

(2) the amount of the drug involved is at least ten (10) **grams** but
 less than twenty-eight (28) grams and an enhancing circumstance
 applies.

SECTION 6. IC 35-48-4-4, AS AMENDED BY P.L.226-2014(ts),
 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2016]: Sec. 4. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;



a controlled substance, pure or adulterated, classified in schedule V; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

a controlled substance, pure or adulterated, classified in schedule V;

commits dealing in a schedule V controlled substance, a Class B misdemeanor, except as provided in subsections (b) through (f).

(b) A person may be convicted of an offense under subsection (a)(2) only if:

(1) there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug; **or**

(2) the amount of the drug involved is at least ten (10) grams.

(c) The offense is a Class A misdemeanor if:

(1) the amount of the drug involved is at least one (1) gram but less than five (5) grams; or

(2) the amount of the drug involved is less than one (1) gram and an enhancing circumstance applies.

(d) The offense is a Level 6 felony if:

(1) the amount of the drug involved is at least five (5) **grams** but less than ten (10) grams; or

(2) the amount of the drug involved is at least one (1) gram but less than five (5) grams and an enhancing circumstance applies.

(e) The offense is a Level 5 felony if:

(1) the amount of the drug involved is at least ten (10) **grams** but less than twenty-eight (28) grams; or

(2) the amount of the drug involved is at least five (5) **grams** but less than ten (10) grams and an enhancing circumstance applies.

(f) The offense is a Level 4 felony if:

(1) the amount of the drug involved is at least twenty-eight (28) grams; or

(2) the amount of the drug involved is at least ten (10) **grams** but less than twenty-eight (28) grams and an enhancing circumstance applies.

SECTION 7. IC 35-48-4-4.6, AS AMENDED BY P.L.168-2014, SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4.6. (a) A person who knowingly or intentionally:

(1) manufactures;



1 (2) finances the manufacture of;
 2 (3) advertises;
 3 (4) distributes; or
 4 (5) possesses with intent to manufacture, finance the manufacture
 5 of, advertise, or distribute;
 6 a substance described in section 4.5 of this chapter commits a Level 5
 7 felony.

8 (b) A person may be convicted of an offense under subsection (a)(5)
 9 only if:

10 (1) there is evidence in addition to the weight of the substance
 11 that the person intended to manufacture, finance the manufacture
 12 of, advertise, or distribute the substance; **or**

13 **(2) the amount of the substance involved is at least ten (10)**
 14 **grams.**

15 (c) A person who knowingly or intentionally possesses a substance
 16 described in section 4.5 of this chapter commits a Class C
 17 misdemeanor. However, the offense is a Class A misdemeanor if the
 18 person has a previous conviction under this section.

19 (d) In any prosecution brought under this section it is not a defense
 20 that the person believed the substance actually was a controlled
 21 substance.

22 (e) This section does not apply to the following:

23 (1) The manufacture, financing the manufacture of, processing,
 24 packaging, distribution, or sale of noncontrolled substances to
 25 licensed medical practitioners for use as placebos in professional
 26 practice or research.

27 (2) Persons acting in the course and legitimate scope of their
 28 employment as law enforcement officers.

29 (3) The retention of production samples of noncontrolled
 30 substances produced before September 1, 1986, where such
 31 samples are required by federal law.

32 SECTION 8. IC 35-48-4-10, AS AMENDED BY P.L.168-2014,
 33 SECTION 100, IS AMENDED TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2016]: Sec. 10. (a) A person who:

35 (1) knowingly or intentionally:

36 (A) manufactures;

37 (B) finances the manufacture of;

38 (C) delivers; or

39 (D) finances the delivery of;

40 marijuana, hash oil, hashish, or salvia, pure or adulterated; or

41 (2) possesses, with intent to:

42 (A) manufacture;



1 (B) finance the manufacture of;
 2 (C) deliver; or
 3 (D) finance the delivery of;
 4 marijuana, hash oil, hashish, or salvia, pure or adulterated;
 5 commits dealing in marijuana, hash oil, hashish, or salvia, a Class A
 6 misdemeanor, except as provided in subsections (b) through (d).

7 (b) A person may be convicted of an offense under subsection (a)(2)
 8 only if:

9 (1) there is evidence in addition to the weight of the drug that the
 10 person intended to manufacture, finance the manufacture of,
 11 deliver, or finance the delivery of the drug; **or**

12 **(2) the amount of the drug involved is at least:**

13 **(A) ten (10) pounds, if the drug is marijuana; or**

14 **(B) three hundred (300) grams, if the drug is hash oil,**
 15 **hashish, or salvia.**

16 (c) The offense is a Level 6 felony if:

17 (1) the person has a prior conviction for a drug offense and the
 18 amount of the drug involved is:

19 (A) less than thirty (30) grams of marijuana; or

20 (B) less than five (5) grams of hash oil, hashish, or salvia; or

21 (2) the amount of the drug involved is:

22 (A) at least thirty (30) grams but less than ten (10) pounds of
 23 marijuana; or

24 (B) at least five (5) grams but less than three hundred (300)
 25 grams of hash oil, hashish, or salvia.

26 (d) The offense is a Level 5 felony if:

27 (1) the person has a prior conviction for a drug dealing offense
 28 and the amount of the drug involved is:

29 (A) at least thirty (30) grams but less than ten (10) pounds of
 30 marijuana; or

31 (B) at least five (5) grams but less than three hundred (300)
 32 grams of hash oil, hashish, or salvia; or

33 (2) the:

34 (A) amount of the drug involved is:

35 (i) at least ten (10) pounds of marijuana; or

36 (ii) at least three hundred (300) grams of hash oil, hashish,
 37 or salvia; or

38 (B) offense involved a sale to a minor.

39 SECTION 9. IC 35-50-6-3.1, AS AMENDED BY P.L.74-2015,
 40 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2016]: Sec. 3.1. (a) This section applies to a person who
 42 commits an offense after June 30, 2014.



(b) A person assigned to Class A earns one (1) day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class B earns one (1) day of good time credit for every three (3) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(d) A person assigned to Class C earns one (1) day of good time credit for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(e) A person assigned to Class D earns no good time credit.

(f) A person assigned to Class P earns one (1) day of good time credit for every four (4) days the person serves on pretrial home detention awaiting trial.

SECTION 10. IC 35-50-6-4, AS AMENDED BY P.L.168-2014, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) A person:

(1) who is not a credit restricted felon; and

(2) who is imprisoned for a Level 6 felony or a misdemeanor or imprisoned awaiting trial or sentencing for a Level 6 felony or misdemeanor;

is initially assigned to Class A.

(b) A person:

(1) who is not a credit restricted felon; and

(2) who is imprisoned for a crime other than a Level 6 felony or misdemeanor or imprisoned awaiting trial or sentencing for a crime other than a Level 6 felony or misdemeanor;

is initially assigned to Class B.

(c) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class C. A credit restricted felon may not be assigned to Class A or Class B.

(d) A person who is not a credit restricted felon may be reassigned to Class C or Class D if the person violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which the person is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.



(e) A person who is a credit restricted felon may be reassigned to Class D and a person who is assigned to Class IV may be assigned to Class III if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.
- (3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III or Class D, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(f) In connection with the hearing granted under subsection (d) or (e), the person is entitled to:

- (1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the **alleged** misconduct is alleged to have violated;
- (2) have reasonable time to prepare for the hearing;
- (3) have an impartial decisionmaker;
- (4) appear and speak in the person's own behalf;
- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if the person's testimony or any evidence derived from the person's testimony is used in any criminal proceedings; and
- (10) have the person's record expunged of any reference to the charge if the person is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(g) Except for a credit restricted felon, a person may be reassigned from:

- (1) Class III to Class I, Class II or Class IV;
- (2) Class II to Class I;



1 (3) Class D to Class A, Class B, or Class C;

2 (4) Class C to Class A or Class B.

3 A person's assignment to Class III, Class II, Class C, or Class D shall
4 be reviewed at least once every six (6) months to determine if the
5 person should be reassigned to a higher credit time class. A credit
6 restricted felon may not be reassigned to Class I or Class II or to Class
7 A, Class B, or Class C.

8 (h) This subsection applies only to a person imprisoned awaiting
9 trial. A person imprisoned awaiting trial is initially assigned to a credit
10 class based on the most serious offense with which the person is
11 charged. If all the offenses of which a person is convicted have a higher
12 credit time class than the most serious offense with which the person
13 is charged, the person earns credit time for the time imprisoned
14 awaiting trial at the credit time class of the most serious offense of
15 which the person was convicted. However, this section does not apply
16 to any period during which the person is reassigned to a lower credit
17 time class for a disciplinary violation.

18 **(i) This subsection applies only to a person placed on pretrial**
19 **home detention awaiting trial. This subsection does not apply to**
20 **any other person placed on home detention. A person placed on**
21 **pretrial home detention awaiting trial is assigned to Class P. A**
22 **person assigned to Class P may not be reassigned to another credit**
23 **time class while the person is on pretrial home detention awaiting**
24 **trial.**

25 SECTION 11. IC 35-50-6-8, AS AMENDED BY P.L.74-2015,
26 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2016]: Sec. 8. ~~(a)~~ A person serving a sentence of life
28 imprisonment without parole does not earn credit time under this
29 chapter.

30 ~~(b) This subsection does not apply to a person confined on home~~
31 ~~detention as a condition of probation under IC 35-38-2.5. A person~~
32 ~~spending time in pretrial home detention does not earn any credit time~~
33 ~~under this chapter.~~

